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No. 06-1472

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNTIED STATES

CHRIS SWEENEY,

Petitioner,

v.

THE CITY OF NEW YORK,
THE NEW YORK CITY POLICE DEPARTMENT, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

Chris Sweeney
P.O. Box 62, Rosebank Station
Staten Island, New York 10305
(718) 727-5189

Petitioner.

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PETITION FOR REHEARING

Petitioner respectfully requests a rehearing of This Court's Order, dated June 25, 2007, denying certiorari in the instant Case (06-1472).

Petitions for rehearing of an order denying certiorari are generally granted in two instances: if a petitioner can demonstrate "intervening circumstances of a substantial or controlling effect"; or if a petitioner raises "other substantial grounds not previously presented" (Rule 44.2). Petitioner is now within both categories.

GROUNDS FOR REHEARING

The Court should grant Rehearing in light of the intervening decision in ***Boumediene, et al. v. Bush*** (No. 06-1195; Rehearing granted June 29, 2007)--a case where suspected terrorists allege deprivation of liberty. The instant Case presents facts of United States residents being deprived of liberty by means strikingly similar to those tactics described by the suspected terrorists in the successful ***Boumediene*** petition, but denied the judicial intervention that This Court appears ready to grant the suspected terrorists. Boumediene cites "the extent of factual discovery available", as an

"inadequacy" contributing to the deprivation of the suspected terrorists' liberty (Boumediene Pet. for Rehearing., p.3).

Petitioner, who was on the opposite side of Boumediene in the war on terrorism and whose counter-terrorism and wiretapping "expertise" was lauded by Respondent Police Department, was granted no discovery whatsoever.

Regardless to Respondents' illicit motives to declare Petitioner unfit, the manner in which Petitioner's liberty[1] was taken away, occurring concurrently with Petitioner performing the aforementioned wiretapping and counter-terrorism duties, raises logical questions concerning how potential inadequacies in unmonitored local law enforcement agencies can remain hidden.

As a fundamental issue of national importance, now should not be the time to conceal any potential inadequacies in the intelligence capabilities of local law enforcement agencies:

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1 This Court in *Board of Regents v. Roth* (408 U.S. 564) and *Perry v. Sindermann* (408 U.S. 593); quoting from *Snead v. Department of Social Services of the City of New York* (355 F.Supp. 764, 771) "...a charge 'that might seriously damage his associations in his community' or impose 'a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities'...[is] 'deprived of liberty'".

In this very regard is another intervening circumstance in support of rehearing and the development of a transparent record in the instant Case: As recently as the time of this filing, on July 14th and 15th, NYPD Deputy Commissioner for Intelligence, David Cohen, was making public announcements containing vague warnings regarding possible terrorist attacks. It should be noted it was the very same Deputy Commissioner who personally solicited Petitioner in writing, stating how the NYPD Intelligence Division needed to use Petitioner's "expertise" (***see*** Amended Complaint, paragraph 21), and then actively used him for counter-terrorism, wiretapping and other intelligence operations **years after** Petitioner was declared an unfit police officer who "twists and misperceives events" and "seriously distorts information".

Litigation as in the instant Case that could help bring to light such contradictions and potential inadequacies in the fight against terrorism should be allowed to proceed, and not actively stifled.

Petitioner was a tenured Police Officer with seven years of exemplary law enforcement service, but maliciously

terminated for unfitness using hearsay and anonymous sources. The means used by the government to effect Petitioner's termination and deprive him of his liberty mirror those tactics described in *Boumediene* (Cert. granted June 29, 2007).

In *Boumediene* (Boumediene "Brief *Amicus Curiae*, Former U.S. Federal Judges *et al.* in support of petitioners, p.12), "These 'tribunals' are part of the military establishment in the Executive Branch, and it is the very purpose of the writ to subject Executive detention to *independent* judicial review." In the instant Case, Petitioner was deprived of liberty by a similar tribunal, a part of the Police establishment in the Executive Branch of Respondent Municipality.

In *Boumediene*, the tribunal was "under extreme pressure" from the executive branch (Boumediene Pet. for Cert., p. 4) to convict, even in the face of a plenipotentiary body's holding that there was "no evidence" against Boumediene (**id.**). In a likewise manner, in the instant Case there was no evidence to deny Petitioner tenure: Such tenure was indeed granted to Petitioner just prior to the tribunal being convened. In the face of that fact, Petitioner's tribunal declared

him unfit and terminated him as a result of being under extreme pressure from the Executive Branch of the Municipality because, among other things, Petitioner had evidence admitting of an illegal quota system signed by a high ranking Police Department supervisor.

Further demonstrating the fraudulent nature of Petitioner's termination, the convening of the tribunal occurred **concurrently** with Petitioner's executing wiretapping warrants and Petitioner effected arrests even **after** the convening of the perfunctory tribunal.

The tribunal that terminated Petitioner, then a fully tenured Police Officer, did not even attribute the purported unfitness to job-related causes so as to avoid giving Petitioner the lucrative tax-free job related disability pension.

In *Boumediene*, the admission of exculpatory evidence was denied (Boumediene *Amicus Brief* of former Federal Judges, *et al.*, p. 13, notation (3)). Likewise, in the instant Case Petitioner's tribunal refused to consider the facts of Petitioner's police work, such as **ongoing** domestic wiretapping under New York State Supreme Court seal. Examination of such police work of Petitioner's exposes the

accusations made against him as being fraudulent on their face.

The tribunals in *Boumediene* as well as in the instant Case were both conducted in a closed hearing; without transcript; without the right to counsel and without the opportunity to rebut accusations. In the instant Case, the accusations were hearsay and from anonymous sources, there were no minutes of the closed hearing and no report was issued. Also as in *Boumediene*, in the instant Case sleep deprivation techniques were used during the more than 20 times Petitioner was interrogated, especially concerning Petitioner's refusal to sign a false confession.[2]

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[2] Terrorist detainees like those in *Boumediene, et al.*, have complained of being pressured by the government to admit to open-ended crimes. This is exactly what happened to Petitioner as a tenured Police Officer in the New York City Police Department some four years prior to his termination. Right after being denied a promotion for the stated and illegal reason of his "arrest and summons activity [being] below par", Petitioner was given a bogus discipline for not loading a Sanitation truck quickly enough. Petitioner was placed under great pressure to sign an open-ended confession statement for disobeying "an order", with no mention of what the purported "order" was. Petitioner, who complained to the Public Safety Committee of the New York City Council, was declared psychologically unfit by Respondent NYPD. Despite being declared psychologically unfit, for f-o-u-r years, and right up to the time of his fraudulent termination, Petitioner was effecting arrests and being used for his "expertise" to carry out counter-terrorism related duties, including domestic eavesdropping surveillance.

In *Boumediene,* the denial of liberty is in the form of imprisonment. In the instant Case the denial of liberty is in the form of termination on account of character-related allegations from anonymous sources and hearsay.

The description in *Boumediene* outlining the defects in his tribunal similarly characterize the defects in the tribunal that terminated Petitioner:

> "...[The tribunal] lacks any mechanism for petitioners to probe and rebut the facts relied upon in imprisoning them. It appears to require the reviewing court to accept the government's record and to limit its review to whether (i) the... complied with its own standards and procedures, and (ii) the use of those standards and procedures comports with the Constitution and laws of the United States."

(Boumediene Petition for Writ of Cert., p. 18)

On the same basis as described by Boumediene in (i) and (ii) above, the State Courts in the instant Case are limited in their review of the **facts** surrounding Petitioner's termination. These very types of defects were noted by Justice Kennedy, concurring in *Hamdan* (126 S. Ct. at 2807)

"provisions for review of legal issues...cannot correct for structural defects...that can cast doubt on the fact-finding process..."

The striking similarities of such defects as described above are further exposed by Judge Weinfeld, who wrote a thoughtful analysis for a three-judge district court in *Snead v. Department of Social Services of the City of New York* (355 F. Supp. 764 at 772):

> "At the interview the employee is placed in the position of having to explain incidents charged by accusers he is not permitted to confront..."

Petitioner could not confront his accusers, and was indeed placed in the above described position when before the tribunal.

Boumediene, in his successful petition, raises issues of the release of exculpatory evidence. In light of this aspect of *Boumediene*, there is a particular duty to develop a transparent record in the instant Case:

Those individuals who:

- were arrested by Petitioner;

had thousands of telephone communications
monitored by Petitioner;
interrogated by Petitioner;
had their names place on State offender
registries by Petitioner, etc.

are being deprived of their own liberty by Respondent New York City Police Department's intentional refusal to provide them the exculpatory evidence that said Police Department was **concurrently** assigning Petitioner to the above mentioned duties and labeling him a Police Officer who "twists and misperceives events" and "seriously distorts information."

To conceal such exculpatory material from these individuals who are being deprived of their liberty is a reckless disregard of This Court's rulings and leaves U.S. residents with less rights than non-resident suspected terrorists.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

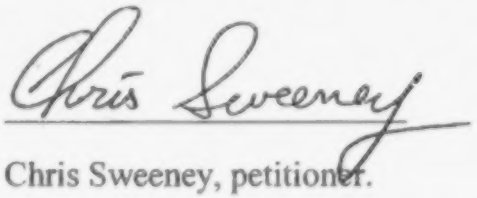
Chris Sweeney

Chris Sweeney,
P.O. Box 62, Rosebank Station
Staten Island, NY 10305

Dated: July 18, 2007

CERTIFICATE OF PETITIONER

Pursuant to Rule 44.2, the instant Petition for Rehearing is presented in a timely manner, in good faith, and not for delay. Its grounds are limited to intervening circumstances of a substantial and controlling effect and grounds not previously presented.



Chris Sweeney, petitioner.

Dated: July 18, 2007